BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Stephen M. & Susan Bass, et al Dist. 7, Map 174, Control Map 174, Parcel 10 Farm Property Tax Year 2007	)) Maury County))

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

An appeal has been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 7, 2008 in Franklin, Tennessee. In attendance at the hearing were Stephen and Susan Bass, the appellants, Robert Lee, General Counsel to the Comptroller, Jimmy Dooley, Assessor of Property, and Carol Dickey, Chief Deputy Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 403.4 acre tract located east of Lawrenceburg Highway in Columbia, Tennessee.

This appeal concerns the taxpayers' contention that subject property was erroneously assessed as "farm property" rather than as "agricultural land" from 1997-2007.[1] As will be discussed below, the taxpayers contended that their taxes should have been based on subject property's use value rather than its market value. The taxpayers seek a refund for each of the tax years equal to the difference between the taxes due on a market value appraisal versus a use value appraisal.

For ease of understanding, the administrative judge will briefly summarize how Tennessee values farmland for ad valorem tax purposes. Tennessee Code Ann. § 67-5-601(a) normally requires that all property be appraised at its market value. The primary exception to this general rule involves the Agricultural, Forest and Open Space Land Act of 1976 codified at Tenn. Code Ann. § 67-5-1001, et seq. [hereafter referred to as the "greenbelt law."]. The greenbelt law enables a property owner to file an application with the assessor of property to have his or her property classified as "agricultural land." Rather than being appraised at market value, "agricultural land" receives a valuation at a reduced rate referred to as "use value.[2]" Farmland that does not receive preferential assessment under the greenbelt law is referred to "farm property" pursuant to the subclassifications set forth in Tenn. Code Ann. § 67-5-801(a).

Beginning in 1985, subject property commenced receiving preferential assessment under the greenbelt law as agricultural land. In 1994, Maury County underwent a countywide reappraisal program. At that time, Tenn. Code Ann. § 67-5-1005(a)(1) required a property owner to reapply for

[1] See Tenn. Code Ann. §§ 67-5-501(3), 67-5-1004(1) and 67-5-1005.

[2] See Tenn. Code Ann. §§ 67-5-1005 and 67-5-1008(a). In the event acreage no longer qualifies for preferential assessment, Tenn. Code Ann. § 67-5-1008(d) provides for the recapture of the tax savings for the preceding three years. Such taxes, referred to as rollback taxes, reflect the difference between the taxes owed on a market value appraisal versus a use value appraisal.

an agricultural land classification during reappraisal years. The owner of subject property at that time failed to reapply and subject property was removed from the greenbelt program effective with tax year 2004. Thus, subject property began being valued as "farm property" rather than as "agricultural land" at that time.

The taxpayers purchased subject property in 1997. The taxpayers instructed their closing attorney, inter alia, that they wanted to make sure subject property received preferential assessment. For whatever reason, this did not occur. Unfortunately, the taxpayers encountered even more serious problems thereafter.

Dr. Bass testified that he contacted the assessor's office by telephone in 1998, 1999 and 2000 to request that the taxpayers' home address be used as their mailing address. Once again, for reasons that are unclear, the assessor's records were not changed. In 2001, subject property was sold on the courthouse steps for delinquent taxes. The taxpayers filed suit and regained their property that same year. In addition, Maury County paid their legal fees. Following the lawsuit, the taxpayers did, in fact, begin receiving notices from Maury County at their home address.

There is no dispute that the taxpayers received the assessment change notice issued by the assessor of property in conjunction with the 2006 countywide reappraisal program. However, the taxpayers erroneously assumed that the terms "farm" and "agricultural land" were synonymous. Indeed, the taxpayers continued to operate under the misapprehension that subject property was receiving preferential assessment.

Dr. Bass testified that he contacted the assessor's office in the latter part of 2007 due to the significant increase in his taxes. It was at this time that the taxpayers realized subject property had never received preferential assessment during their ownership. The taxpayers proceeded to file a greenbelt application which has been approved effective with tax year 2008.

The taxpayers essentially asserted that they had been victimized through no fault of their own. The taxpayers maintained that the appropriate remedy was to refund what they perceived as overpayments from 1997-2007.

Not surprisingly, the assessor of property opposed the taxpayers' position. Mr. Lee contended that the deadline for appealing tax years 1997-2006 has already passed and the State Board of Equalization lacks jurisdiction over those tax years. In addition, Mr. Lee argued that a greenbelt application was never filed prior to 2007 and the State Board of Equalization has no authority to retroactively grant such an application. Finally, with respect to tax year 2007, Mr. Lee maintained that the taxpayers failed to establish reasonable cause for not appealing to the Maury County Board of Equalization.

The administrative judge finds that the jurisdiction of the State Board of Equalization is governed in relevant part by Tenn. Code Ann. § 67-5-1412(e) which provides as follows:

> (e) Appeals to the state board of equalization from action of a local board of equalization must be filed on or before August 1 of the tax

> year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. *The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.*
>
> [Emphasis supplied]

The administrative judge finds that the taxpayers' appeal was received on December 4, 2007. The administrative judge finds that March 1, 1998 - March 1, 2007 constituted the deadlines for filing appeals for tax years 1997-2006. Accordingly, the administrative judge finds that the State Board of Equalization lacks jurisdiction to even hear appeals for those tax years. See *Trustees of Church of Christ* (Obion Co., Exemption Claim) wherein the Assessment Appeals Commission held that the State Board of Equalization lacks equitable powers and cannot simply waive statutory requirements reasoning in relevant part as follows:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Final Decision and Order at 2.

The administrative judge finds that Tenn. Code Ann. § 67-5-1005(a)(1) requires greenbelt applications to be filed "by March 1 of the first year for which the classification is sought." The administrative judge finds that since the taxpayers' greenbelt application was not filed until November 20, 2007, subject property cannot receive preferential assessment until tax year 2008. As previously noted, the assessor has, in fact, approved the application effective with tax year 2008. Once again, the administrative judge finds that the State Board of Equalization cannot waive a statutory requirement and grant retroactive relief.

The administrative judge finds that the only issue properly before the State Board of Equalization concerns the issue of "reasonable cause" for tax year 2007. This jurisdictional issue arises from the fact that no appeal was made to the Maury County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is

permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992). *See also John Orovets* (Assessment Appeals Commission, Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond their control prevented them from appealing to the Maury County Board of Equalization.

The administrative judge finds for all practical purposes the taxpayers contended they should not be held responsible for their failure to receive preferential assessment because they assumed everything had been taken care of based on their instructions to the closing attorney. The administrative judge respectfully disagrees.

The administrative judge finds the problems the taxpayers experienced in conjunction with the sale of their property in 2001 were unfortunate, but have no relevance to the issues of greenbelt and failure to appeal to the Maury County Board of Equalization in 2007. The administrative judge finds that the taxpayers own other property in Williamson County receiving preferential assessment and surely were aware of the need to file a greenbelt application. The administrative judge finds the fact the closing attorney was instructed to handle matters such as greenbelt does not excuse the taxpayers from confirming that their wishes had been carried out. The administrative judge finds the taxpayers' inaction even more puzzling considering that Ms. Bass is an attorney, the taxpayers received and presumably reviewed copies of the closing documents, and paid the taxes each year.

Based upon the foregoing, the administrative judge finds that the taxpayers were not prevented from appealing to the Maury County Board of Equalization due to a circumstance beyond their control. Accordingly, the administrative judge further finds that this appeal must be dismissed for lack of jurisdiction.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of April, 2008.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Stephen M. and Susan Bass
Robert Lee, Esq.
Jimmy R. Dooley, Assessor of Property